

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

## THE BANK OF NEW YORK MELLON,

Case No. 2:17-CV-1919 JCM (PAL)

**Plaintiff(s),**

## ORDER

v.

JOHN FERRARO, et al.,

Defendant(s).

Presently before the court is defendant/cross defendant Red Rock Financial Services, LLC’s (“Red Rock”) motion to dismiss. (ECF No. 44). Defendant/cross claimant Northshores Owners Association (“Northshores”) filed a response (ECF No. 47), to which Red Rock replied (ECF No. 48).

17       Also before the court is defendant Saticoy Bay LLC Series 3333 Hillindon's ("Saticoy  
18 Bay") motion for summary judgment. (ECF No. 49). Plaintiff Bank of New York Mellon  
19 ("BNYM") did not file a response and the time to do so has passed.

Also before the court is BNYM's motion for leave to amend (ECF No. 57). Defendant Northshores and Red Rock filed a response (ECF Nos. 59, 61), to which BNYM replied (ECF No. 64).

23       Also before the court is Northshores and Red Rock's motion for summary judgment (ECF  
24 Nos. 62, 65). BNYM filed a response (ECF No. 66), to which Northshores and Red Rock filed  
25 separate replies (ECF Nos. 66, 67).

Also before the court is BNYM's motion for summary judgment. (ECF No. 63). Northeshores and Red Rock filed a response (ECF Nos. 67, 68), to which BNYM replied (ECF No. 71).

1       **I.      Facts**

2           On June 13, 2017, BNYM initiated this action, alleging six causes of action: (1) quiet  
3 title/declaratory relief against all defendants; (2) breach of NRS 116.3116 against Northshores and  
4 Red Rock; (3) wrongful foreclosure against Northshores and Red Rock; (4) injunctive relief  
5 against Saticoy Bay; (5) judicial foreclosure; and (6) breach of contract against John Ferraro. (ECF  
6 No. 1).

7           On March 13, 2018, the court granted Red Rock and Northshores' motions to dismiss (ECF  
8 Nos. 10, 13) as to claims two through five. (ECF No. 33). The court dismissed the breach of NRS  
9 116.3116 and wrongful foreclosure claims because BNYM failed to mediate pursuant to NRS  
10 38.310. *Id.* To afford BNYM an opportunity to mediate and, if necessary, re-assert its second and  
11 third claims, the court extended the dispositive motions filing deadline to August 17, 2018. (ECF  
12 No. 55).

13          On July 26, 2018, BNYM informed the court that mediation was unsuccessful and  
14 requested that the court grant leave to amend its complaint. (ECF No. 57). On August 17, 2018,  
15 BNYM provided the court with a sworn statement verifying that the parties mediated the second  
16 and third claims through the Nevada Real Estate Division. (ECF No. 64-6).

17          Now, BNYM moves for leave to amend its complaint so that it may reassert its claims for  
18 breach of NRS 116.3116 and wrongful foreclosure. (ECF No. 57). Also before the court are four  
19 other motions, including three motions for summary judgment and Red Rock's motion to dismiss  
20 Northshores' cross-claims for indemnification and contribution. (ECF Nos. 44, 49, 62, 63).

21       **II.     Legal Standard**

22          Federal Rule of Civil Procedure 15(a) provides that “[t]he court should freely give leave  
23 [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The United States Supreme Court  
24 has interpreted Rule 15(a) and confirmed the liberal standard district courts must apply when  
25 granting such leave. In *Foman v. Davis*, the Supreme Court explained:

26           In the absence of any apparent or declared reason—such as undue delay, bad faith  
27 or dilatory motive on the part of the movant, repeated failure to cure deficiencies  
28 by amendments previously allowed, undue prejudice to the opposing party by virtue  
of allowance of the amendment, futility of the amendment, etc.—the leave sought  
should, as the rules require, be “freely given.”

1 371 U.S. 178, 182 (1962); *see also Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir.  
2 1990).

3 Further, Rule 15(a)(2) provides that “a party may amend its pleading only with the  
4 opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Local Rule 15-  
5 1(a) states that “the moving party shall attach the proposed amended pleading to any motion  
6 seeking leave of the court to file an amended pleading.” LR 15-1(a).

7 **III. Discussion**

8 After the court dismissed BNYM’s claims for breach of NRS 116.3116 and wrongful  
9 foreclosure, BNYM timely initiated and completed mediation in accordance with NRS 38.310.  
10 *See* (ECF Nos. 33, 57). The mediation was unsuccessful, which renders this court the appropriate  
11 tribunal to adjudicate BNYM’s claims. Good cause showing, the court will grant BNYM’s motion  
12 for leave to amend.

13 The court will deny without prejudice all remaining motions to the parties’ ability to re-file  
14 so that they may adequately address all claims that arise in this action. *See Paws Up Ranch, LLC*  
15 *v. Green*, No. 2:12-cv-01547-GMN-NJK, 2014 WL 4828934 at \*4 (D. Nev. Sept. 30, 2014)  
16 (holding that granting leave to amend a complaint requires denying without prejudice cross-claims  
17 for indemnification and contribution); *see also Farkas v. Gedney*, No. 2:14-cv-00451-JAD-VCF,  
18 2014 WL 5782788 at \*3 (D. Nev. Nov 6, 2014) (“[B]ecause granting [plaintiff’s] motion for leave  
19 to amend will alter the scope of defendants’ now-filed motion for summary judgment, defendants’  
20 motion for summary judgment is denied without prejudice.”)

21 **IV. Conclusion**

22 Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Red Rock’s motion to  
24 dismiss (ECF No. 44) be, and the same hereby is, DENIED without prejudice.

25 IT IS FURTHER ORDERED that Saticoy Bay’s motion for summary judgment (ECF No.  
26 49) be, and the same hereby is, DENIED without prejudice.

27 IT IS FURTHER ORDERED that BNYM’s motion for leave to amend (ECF No. 57) be,  
28 and the same hereby is, GRANTED.

1 IT IS FURTHER ORDERED that Northshores' motion for summary judgment (ECF No.  
2 62) be, and the same hereby is, DENIED without prejudice.

3 IT IS FURTHER ORDERED that BNYM's motion for summary judgment (ECF No. 63)  
4 be, and the same hereby is, DENIED without prejudice.

5 DATED November 14, 2018.

6   
7 UNITED STATES DISTRICT JUDGE

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28